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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 28th July 1953*

**S.R.O. 1548.**—Whereas the election of Ch. Badlu Ram, as a member of the Legislative Assembly of the State of Punjab, from the Kalanaur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Ch. Ram Sarup, son of Shri Ramji Lal, Village Khadwali Zail Sanghi, Tehsil and District, Rohtak.

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE PUNJAB ELECTION TRIBUNAL, HISSAR

ELECTION PETITION No. 139 OF 1952

Sh. Ram Sarup Vs. Sh. Badlu Ram etc.

CORAM:

Shri Maharaj Kishore, Rtd. District & Sessions Judge—*Chairman*.

Shri Tek Chand Sethi, Rtd. District & Sessions Judge—*Member*.

Shri G. S. Gyani, Bar.-at-Law—*Member*.

This is a petition by one of the defeated candidates Ch. Ram Sarup of village Khadwali, Zail Sangi, calling in question the recent election of Ch. Badlu Ram (respondent No. 1) of village Sangi to the Punjab Legislative Assembly from Kalanour Constituency, District Rohtak, and praying for the declaration that his election be set aside and instead he (petitioner) be declared to have been duly elected.

Eight persons, i.e., the petitioner and the seven respondents had filed nomination papers for the aforesaid seat, Malik Sant Lal and Malik Shanti Lal res-

pondents had withdrawn by the due date and so the contest centred round the rest. They polled votes as under:—

1. Sh. Badlu Ram (returned candidate)	.. 14,448
2. Sh. Ram Sarup (petitioner)	.. 13,101
3. Th. Nasib Singh	.. 6,014
4. Ch. Sameshwar Datt	.. 365
5. Sh. Perkash Chand Batra	.. 651
6. Jamadar Akhe Ram	.. 1,506

The petitioner has challenged the election of the Returned candidate on two grounds:

- (1) The respondent's nomination papers had been wrongly accepted by the Returning Officer, *vide* para. 11 of the petition.
- (2) The respondent was guilty of major corrupt practices within the meaning of Section 124 of the Representation of People Act, 1951; *vide*, paras. 3 to 10 of the petition, and their particulars mentioned in lists 1 to 7 attached to the petition.

The Returned candidate, who alone contested the petition, filed a writer statement denying the aforesaid allegations and maintaining that he had not committed any corrupt practice at all and, therefore, his election could not be invalidated. He also added that his nomination papers had been properly accepted and were not open to any objection.

On the above pleadings two issues were framed namely, (i) whether the nomination papers of respondent No. 1 were improperly accepted, *vide*, the grounds alleged in para. 11 of the petition and, if so, its effect? (ii) whether the election of respondent No. 1 is liable to be set aside, *vide*, the grounds alleged in paras. 3 to 10 in the petition, particulars of which are given in the lists attached to the petition and, if so, its effect?

*Issue No. 1.*—No evidence was led on this issue and it was not pressed before us either. The issue, therefore, goes off for want of evidence.

*Issue No. 2.*—This is the sole issue in the case and the question for decision is whether the petitioner has succeeded in establishing the various corrupt practices attributed to the respondent.

Before taking up the lists of the petitioner containing the alleged corrupt practices, it is necessary to refer to an argument advanced at the bar. The respondent's learned counsel contends that this case is of a quasi-criminal nature and the Tribunal should insist on strict proof of the alleged corrupt practices as it would in a criminal case. He has cited several reported cases of Election Tribunals in his support. The petitioner's learned counsel is not prepared to go so far, though he concedes that the burden of proof is on him and he has to discharge it to the satisfaction of the Tribunal. The question thus is: what should be the quantum of proof in such cases?

Section 90 (III) of the Representation of Peoples' Act makes the provisions of the Indian Evidence Act, 1872, applicable in all respects to the trial of an election petition, subject of course to the provisions of this Act.

The Evidence Act defines the word "proved", "disproved" "not proved" and lays down:

"A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

The rules of evidence for civil and criminal cases are, in general, the same but some provisions in the Act are peculiar to criminal cases, and others, peculiar to civil cases. There is, however, a marked difference as to the effect of evidence in civil and criminal cases. Thus, whereas in a civil case a mere preponderance of probability is a sufficient basis of decision, in a criminal case persuasion of guilt must amount to "such a moral certainty as convinces the minds of the tribunal as reasonable men beyond all reasonable doubt". Where, therefore, there is no such moral certainty, and there is reasonable doubt as to the guilt of the accused, the benefit of doubt is given to the accused. These are elementary principles of the law of Evidence and need no discussion.

In this connection I may refer to the following observations of Halsbury in para. 560 at page 286 in "the Laws of England", Volume XII—on elections:—

"Due proof of a single act of bribery by candidate or his agents, however, insignificant that act may be, is sufficient to invalidate the election. The judges are not at liberty to weigh its importance nor can they allow any excuse, whatever the circumstances may be, such as they can allow in certain conditions in cases of cheating or undue influence by agents. For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive. Bribery, however, may be implied from the circumstances of the case and the court is not bound by the strict practice applicable to criminal cases but may on the uncorroborated testimony of an accomplice. The court strips the proceeding in each case of every colour, every dress and every shape to discover its real and true nature".

The above passage was also cited in the Dharwar Constituency case (published in the *Gazette of India Extraordinary*, dated 5th March, 1953) where at pages 707 and 708, the learned Tribunal observed that an election enquiry, though quasi-criminal in nature, allows the respondent to be examined and cross-examined on oath and while deciding whether the allegations of the petitioner are proved beyond reasonable doubt or not the evidence of the respondent on oath must also be considered. Having said this, we wish to state clearly that we have applied the principle of proof beyond reasonable doubt in appreciating the evidence and coming to our findings.

Where an act entails penalties such as in criminal cases, or forfeiture or loss of status, such an act has to be proved beyond reasonable doubt. While appraising the evidence led before us we have applied this principle of law and we shall have to see whether the charges levelled against the respondent have been proved beyond all reasonable doubts.

Now coming to the charges, it will be convenient to discuss the lists seritum.

#### LIST No. 1(A)

In para. 3(i) of his petition the petitioner alleged that the returned candidate himself and Sh. Piyare Lal, his polling agent and real brother, were guilty of the major corrupt practices of bribery under Section 123(1) of the Representation of Peoples' Act, the full particulars of which he mentioned in this list.

The list mentions 8 cases in which bribery is said to have been practised by or on behalf of the respondent, but no evidence was led on the first 4 which were not, therefore, pressed before us. The remaining 4 are as under:—

No. 5.—Sh. Badlu Ram is alleged to have paid Rs. 15 cash to Chander Bhan (P.W. 20) on 10th January 1952 at Makrauli-kalan and thereby got 5 votes of his family. This Chander Bhan is a sweeper of Makrauli-kalan and plies a tonga on hire. He states that a day before polling started in his village he was paid Rs. 15 by Ch. Badlu Ram in lieu of the 5 votes of his family including himself. His version is that on the morning in question at about 9 A.M. he was carrying 3 passengers in his tonga for Rohtak, which is 7 miles off, and in the village Gora Ch. Badlu Ram met him and paid him Rs. 15 in the presence of the passengers and stated that he and the 4 members of his family who were enlisted as voters should cast their votes in his favour and to this he agreed. The alleged passengers were Balwant Singh Sarpanch, brother of Surat Singh P.W., Chandaj Lamberdar and Phula Chamar. He admitted as a fact that the Harijans of his village had voted for Ch. Badlu Ram enbloc.

It is a fact, admitted by the witness himself and not denied before us, that the petitioner's nephew Ch. Sanchi Ram is a Tonga Inspector of the District Board, Rohtak and the witness plies his tonga on the District Board roads. The petitioner is also Vice-President of the District Board. It, therefore, appears that the witness is under the influence of the petitioner. It is hard to believe that the respondent, who was a Member of the previous Legislative Assembly as well and was not a stranger to elections, should have paid the bribe openly in the presence of the passengers at a public place.

Sh. Balwant Singh, one of the passengers mentioned above, was not examined at all. Phula Chamar, P.W. 21, supported the above witness and stated that he was going to Rohtak that day to purchase hides from one Mansa Chamar of village Jullunder, and while the tonga was still standing in the village

stand near the Gora Ch. Badlu Ram handed over three currency notes straightway to the tonga driver and told him that the 5 votes of his family would be his and to this the latter agreed. The witness was also a voter of this Constituency and knew Ch. Badlu Ram since long but he admits that Ch. Badlu Ram had no talk with him and had never approached him for his vote or the votes of the four members of his family. He also admits that the Harijans of the village had already resolved to vote for the Congress candidate.

Chandgi Lamberdar, P.W. 22, is a Brahman of Mokhrauli and is stated to be the third passenger in the tonga. He, however, gives a contradictory version of the affair. In one breath he says that Ch. Badlu Ram came when the tonga was about to start and gave the currency notes straightway to the tonga driver asking him to reserve his 5 votes for him, and in the next breath he says that Ch. Badlu Ram took Chander Bhan aside and there he gave him the money and the passengers did not hear any talk which took place between them but on enquiry the driver stated that money had been given to him for reserving his five votes for the respondent. The respondent of course denied to have paid anything to the tonga driver.

The tonga driver is an accomplice and his evidence cannot be believed without material corroboration although he is found to have voted for the respondent. The evidence adduced in corroboration is utterly unreliable and I have no hesitation in disbelieving it. It is not surprising that this tonga driver, who is a man of straw, has now been won over to depose against the respondent. I, therefore, hold that this instance has not been proved.

No. 6—Sh. Piyare Lal, brother of the respondent and his polling agent at some stations, is alleged to have paid Rs. 3 to Banwari, P.W. 14, for his vote on 5th January 1952 in V. Chamaria. Sh. Piyare Lal, when in the witness-box, of course denied this allegation.

Banwari P.W. 14 is a *Beraqi* of V. Chamari which, the petitioner has himself admitted, was his "stronghold" in the election. The witness says that on the polling day Ch. Piyare Lal met him in the morning while he was going to the polling booth and asked him to vote for Ch. Badlu Ram against payment of Rs. 3, he took the money and told him that he would act accordingly and thereupon he went to the polling booth at twelve noon and cast his vote in favour of the respondent. He goes on to say that after separating from Sh. Piyare Lal he met Dewana P.W. 49 and Bharta P.W. 48 of his village and on their enquiry told them what had taken place between him and Sh. Piyare Lal, and adds that Dewana and Bharta wanted him to vote for the petitioner but he told them that he had been paid for the Congress candidate and would vote for him. He avers that he would have voted for the petitioner if he had not been bribed by Sh. Piyare Lal in the above manner. His three cousins were also voters but he did not know for whom they had voted. He admits that he did not give out to any body at the polling station that he had accepted money, nor did he meet Sh. Piyare Lal at the polling station. The ballot papers show that the witness had actually voted for the respondent.

Bharta or Bharat Singh P.W. 48 is a basic-trained teacher working in the village of Khadwali but belongs to V. Chamari. Khadwali is the petitioner's village. He states that on the polling day at about 6-30 A.M. he was going to bring soap from Banwari Biragi to wash his clothes and on the way he met Banwari P.W. and Sh. Piyare Lal and saw them talking something. He stopped on seeing Banwari and saw Sh. Piyare Lal giving something to Banwari and the latter placing it in his *Dub* though he could not see what it was. Sh. Piyare Lal then left and he asked Banwari what he was talking about upon which he told him that Sh. Piyare Lal had given him Rs. 3 and had taken his word to cast his vote in the ballot box bearing the (Congress) symbol of bullocks and yoke. The witness denied that he had supported the petitioner in the election, though according to Banwari P.W. he wanted him to vote for the petitioner. Evidently the witness has not come to court with clean hands for the petitioner's learned counsel has conceded before us that the witness had voted for the petitioner. The witness admits never to have mentioned to any body that he had seen Banwari P.W. take bribe from Shri Piyare Lal, and such being the case it is surprising that the petitioner should have caught hold of this man to depose in his favour.

Dewan Singh P.W. 49 was admittedly the petitioner's voter. Like the above witness, he is also a chance witness, his version being that he was going out to ease himself when he saw Piyare Lal and Banwari talking to each other and the former taking out something from his pocket and passing it on to Banwari and the latter placing it in his *Dub*. Sh. Piyare Lal then left and on the asking of

this witness, Banwari told him that Sh. Piya Lal had given him Rs. 3 and had taken his word to vote for the respondent. The witness admits that he was challaned in a dacoity case about 12 or 13 years ago but was acquitted. He also admits that he did not mention the above incident to anyone and it is not, therefore, clear how the petitioner was able to know that this man was also present at the relevant time. The irresistible conclusion is that the petitioner or his people have been able to prevail upon Banwari and secure two of his voters to depose in favour of the petitioner. The evidence on the record is not convincing and is not sufficient in my opinion to bring home the charge to the respondent or his brother. This instance is also not proved.

No. 8—On 16th January 1952, at village Kaloi, Ch. Badlu Ram is said to have paid Rs. 2 to Kehri P.W. 28 for his vote—a fact which Ch. Badlu Ram stoutly denied in his statement.

Kehri P.W. 28 is a Jat of village Kaloi which admittedly was a 'stronghold' of the petitioner in the election. He states that on the polling day he was going to the polling station in the afternoon to cast his vote and met Ch. Badlu Ram about 48 paces from the booth and there the latter gave him Rs. 2 and asked him to put the ballot paper in the ballot box which had a pair of bullocks and yoke as its symbol; he took the money and put his vote in that box. On coming out of the polling station, he says, Nand Singh and Ratnu of his village met him and enquired from him what Ch. Badlu Ram had told him and he informed them that he had given him Rs. 2 and got his vote cast in his box. This is the version of this witness.

The witness admits that some 10 days before the polling Ch. Badlu Ram had come to his house and offered him Rs. 5 and asked him to vote for him but he had not then committed himself and replied that he would vote for the person chosen by his brotherhood. It is strange that the witness did not then accept Rs. 5 which were being offered to him in his house but accepted Rs. 2 while going to the polling station to cast his vote. Again, it is very unlikely that the respondent will be so foolish as to pay the bribe openly when the witness was only 40 paces from the polling booth. At every polling station there was a posse of policemen and it is impossible to believe that the respondent would be so desperate as to pay the witness a bribe almost within their gaze.

The witness also admits that a day previous to the polling, his brotherhood had decided to vote for the petitioner. Evidently the witness was very much anxious to abide by the brotherhood when he was offered Rs. 5 but eventually he went down to accept Rs. 2 from the respondent in violation of the decision of his brotherhood. This sounds strange. Again, he was not a summoned witness and admits to have been brought to court for evidence by Nand Singh P.W. It is, however, a fact, as the ballot box shows, that he voted for the respondent.

Nand Singh P.W. 29 and Ratnu P.W. 74 are Jats of V. Kaloi and state that they saw Kehri P.W. talking to Ch. Badlu Ram respondent and putting something in his *Dub*; after coming out of the polling booth they enquired from him what the matter was and he replied that the respondent had given him Rs. 2 and consequently he had cast his vote in favour of the respondent. Nand Singh admits that a *Panchayat* was convened in the village some 10 or 12 days before the polling and it was decided that the Jats should all vote for the Zimindara League candidate i.e. the petitioner. He is not a summoned witness but attended the court at the asking of Ch. Surat Singh P.W. of Makruli who was the petitioner's supporter. Likewise Ratnu is also not a summoned witness but came to court at the asking of one Jug Lal S/o Ranjit of his village.

Dharam Singh D.W. 45 and Prebhu Dyal D.W. 46, the worker and the polling agent respectively of the respondent at the above polling station have deposed that the respondent did not attend the polling station on the 16th at all. This is also the version of the respondent himself. These witnesses are of course interested, but the burden lies on the petitioner to prove the charge and the evidence he has produced is not convincing or free from doubt. I, therefore, hold that this instance of bribery is also not proved.

Thus no instance of bribery mentioned in this list is proved by the petitioner.

#### LIST NO. I(B)

It is common ground that after the Partition most person of Jhang district were allotted lands and they settled down in Rohtak district. In this Constituency there were no less than 12000 displaced persons votes out of which half i.e. about 5000 or 6000 are believed to have been cast at the last election. Out of 8 candidates from this Constituency, four i.e. Sh. Sameshwar Datt, Sh. Perkash

Chand Batra, Malik Sant Lal and Malik Shanti Lal hailed from Jhang district, as it was believed that the displaced persons would vote for a man of their own district. It is contended that there was a demand to persuade only one displaced person to stand so that votes of the displaced persons may not be split up. Sh. Sameshwar Datt is said to be the favoured person and, therefore, Malik Sant Lal and Malik Shanti Lal withdrew before the due date but Sh. Perkash Chand Batra, who is said to be hostile to Sh. Sameshwar Datt, did not like to withdraw and decided to contest the election. Th. Nasib Singh, who was banking upon Rajputs' votes, was anxious to secure the votes of displaced persons as well and thereby put up a tough fight against the Congress nominee i.e. Ch. Badlu Ram respondent, and hence he wanted the displaced candidates to withdraw from the contest in his favour. The allegation made in this list or schedule is that "on 26th December 1951 a *Panchayat* was convened by Th. Nasib Singh at Kalanour with the object of inducing Ch. Sameshwar Datt to withdraw from being a candidate and stop canvassing for him. It was decided by the *Panchayat* that for the above purpose Th. Nasib Singh should deposit with Munshi Tara Chand Advocate and Sh. Kashmiri Lal Sehgal a sum of Rs. 1,000 as security and Rs. 3,000 as the election expenses incurred by Sh. Sameshwar Datt. On 27th December 1951 the abovementioned sum was deposited with Munshi Tara Chand through Mahant Balaqi Dass of Kalanour. On 29th December 1951 Rs. 2,555 were given to Ch. Sameshwar Datt out of this sum and Rs. 445 were latter on returned to Th. Nasib Singh. The sum of Rs. 1,000 deposited as security has not been given back to Th. Nasib Singh".

It will be seen that neither Ch. Badlu Ram respondent nor Ch. Perkash Chand Batra come in the picture as given above, but they were introduced later on in the petitioner's evidence as and when he got progressive enlightenment of the case.

Ch. Ram Bhaj, Advocate P.W. 7 and Sh. Sri Chand, Advocate P.W. 12 have no personal knowledge of this matter. The former is the petitioner's nephew and the latter was a supporter of the petitioner and had also fought for an Assembly seat from some other Constituency on the Zimindara League ticket. Their evidence need not detain us at all.

Malik Sant Lal Advocate, P.W. 15, hails from Jhang district and was also a candidate for this seat but had withdrawn from the contest in time. He says that there were about 12,000 refugee votes in this Constituency and Sh. Sameshwar Datt commanded majority of them as against Mr. Perkash Chand Batra among the refugees but both these persons did not contest the election. According to him two *Panchayats* were held at Kalanour on different dates some 10 or 15 days before the polling and he attended both of them. These meetings were convened to decide as to which person out of refugees should be set up to contest the election because consensus of opinion was that if one person alone was set up he could succeed. In the first meeting, which took place a day before the withdrawals, it was decided that Ch. Sameshwar Datt should alone be supported and according to that decision the witness and Malik Shanti Lal withdrew. Shri Perkash Chand Batra and Th. Nasib Singh, the witness goes on to say, were present in the meeting but they did not abide by this decision and did not withdraw. The witness, however, corrected himself and stated that in the first meeting it was decided that Sh. Sameshwar Datt should contest the election out of the refugees and Th. Nasib Singh's case should be considered later. The second meeting was convened 10 or 12 days before the polling to decide which out of Sh. Sameshwar Datt and Th. Nasib Singh should remain standing and it was decided that Munshi Tara Chand, Advocate and Sh. Kashmiri Lal, both of Jhang, be appointed as arbitrators and both the candidates should deposit Rs. 1,000 with them by way of security and undertake to abide by their decision and both of them should intimate the arbitrators the amount of expenses which they had incurred on election propaganda till then, and that if either of the two did not abide by that decision he would forfeit the sum. The arbitrators decided, according to the witness, that Ch. Sameshwar Datt should be asked to withdraw and Th. Nasib Singh should contest the election and should pay the cost of Mr. Datt incurred till then, his costs being Rs. 2,700, the witness adds that Munshi Tara Chand Advocate and Shri Kashmiri Lal both told him that this amount of Rs. 2,700 had been actually paid to Mr. Datt by Th. Nasib Singh, and after this decision Sh. Sameshwar Datt gave up all his activities towards his candidature. The witness says that he then felt relieved of his responsibilities to support Mr. Datt and he took his permission to support whosoever he liked and then he supported the petitioner, Sh. Ram Sarup. In the opinion of this witness the displaced persons felt very much the withdrawal of Mr. Datt and considered that they were being treated as chattels and hence practically all the displaced persons voted for the Congress candidate.

The above witness, whom I have purposely quoted extensively gives the petitioner's case, can be said to have a personal knowledge of the two *Panchayats* only but he is no witness to the actual payment of the bribe to Mr. Datt for which he has mainly relied upon the information conveyed to him by the two arbitrators. The arbitrator's evidence will have to be sifted in order to arrive at the truth.

Pt. Tara Chand Advocate, Rohtak, P.W. 19, was one of the arbitrators appointed to gauge the situation about the chances of success of the candidate out of Sh. Datt and Th. Nasib Singh. He says that he and his companion Ch. Kashmiri Lal Sehgal toured the Constituency and came to the conclusion that Th. Nasib Singh had better chances as compared with Mr. Datt, and they, therefore, decided that the latter should withdraw in favour of the former and get his expenses as assessed by them from him. The witness adds that the arbitrators assessed Rs. 2,554 as expenses of Mr. Datt and the same amount, which had been sent to them through Mahanat Balaqi Dass on behalf of Th. Nasib Singh, was paid to him i.e. Mr. Datt. The witness, however, does not name the person who actually paid the amount to Mr. Datt, nor does he disclose the time, date or the place where the amount was paid to him. It will be seen that he does not say that he paid the amount to Mr. Datt and in the absence of such an assertion it could not be ascertained from his evidence as to the person who paid the amount or the place of payment on when the amount was paid.

The other arbitrator, Sh. Kashmiri Lal Sehgal, was not examined in court at all. He was said to be the senior arbitrator and his evidence was indispensable in my opinion. He is said to be lying ill at Delhi but he could be examined on commission or the Tribunal could be moved to go to Delhi and record his statement. In another case this Tribunal did go to Amritsar to record the evidence of an important witness who was lying ill in T.B. hospital there. We do not know the ailment Mr. Sehgal was suffering from, and there is nothing on the record to show that he is not able to make a statement. Under the circumstances the omission to examine such an important witness must tell heavily on the petitioner's case.

Mahanat Balaqi, P.W. 16, claims to have attended the second *Panchayat* when Mr. Datt was asked to withdraw in favour of Th. Nasib Singh. He says that the amount of Rs. 3,000 was paid to him by Bawa Nita Nand P.W. and thereupon he went to Rohtak and paid it to Munshi Tara Chand. He does not know wherefrom Bawa Nita Nand had got the money or whether the amount was actually paid to Mr. Datt.

Bawa Nita Nand, P.W. 80, gives a confusing story. He says that the sum of Rs. 3,000 was paid to him at his house by Jagmal Singh P.W., and he passed on this money to Mahant Balaqi Das at Kalanour so that he might pay it to Sh. Tara Chand and Kashmiri Lal arbitrators. According to him, Jagmal Singh brought the money a day later than the prescribed date and on his inquiry Th. Jagmal Singh told him that the amount was not then ready with Th. Nasib Singh and had later on been collected as follows:—Rs. 400 from Th. Nasib Singh, about Rs. 1,600 from himself i.e. Jagmal Singh (or his relatives), Rs. 1,000 from Ch. Badlu Ram respondent. A clumsy attempt was made to entangle Ch. Badlu Ram also in this affair though he could not have gained at all by the withdrawal of Mr. Datt in favour of Th. Nasib Singh. To this I will revert later on.

The above witness admits that he was alone in his house when the sum of Rs. 3,000 was paid to him and nobody was present when he passed it on to Mahanat Balaqi Das. Again, according to the witness the amount in question was to be paid to Mr. Datt after he had performed his part of the agreement i.e. after he had helped Th. Nasib Singh with the refugees' votes and the amount was to remain with the two arbitrators till then. They had to pass the money to Mr. Datt after they had been informed by Th. Nasib Singh that he had got proper help in the polling from Mr. Datt. It is common ground that Mr. Datt did not render any help to Th. Nasib Singh at all and yet, it is strange that he was paid a large sum of Rs. 2,550 odd. The witness says that after the polling an information was sent to the arbitrators that the money should not be paid to Mr. Datt because he had not performed his part of the contract but, the witness goes on, Sh. Tara Chand told him that he had paid Rs. 2,600 to Mr. Datt and had refunded Rs. 400 to Th. Nasib Singh, notwithstanding the aforesaid information sent to him, because he had received a letter from the Senior arbitrator Sh. Kashmiri Lal to pay up the amount. This letter was not referred to by any other witness and was not mentioned even by Sh. Tara Chand and was not produced on the record.

The witness attempted to introduce another matter in this story. As already observed Sh. Perakash Chand Batra had refused to withdraw and he was also a displaced person. It was felt that the mere withdrawal of Mr. Datt from the arena will not be enough to place the refugees' votes at the disposal of Th. Nasib Singh, and, therefore, the witness was made to say that the amount of Rs. 3,000 in fact included the election expenses of Sh. Perakash Chand Batra and Mr. Datt and had to be paid to both of them. Indeed, as revealed by this witness, another *Panchayat* was to be convened after the election to decide in what proportion the amount was to be paid to the two candidates, Mr. Datt and Sh. Perakash Chand Batra but no such *Panchayat* was ever held nor was the convening of a third *Panchayat* mentioned by any other witness. The witness states that he did not enquire from Sh. Tara Chand why Sh. Perakash Chand Batra had not been paid and how he would be paid if he demanded his money. The evidence of this witness has really confounded the whole story and made a mess of the whole affair.

Th. Nasib Singh P.W. 18 is one of the main persons concerned in this matter. Referring to the *Panchayats*, he says that it was decided that Mr. Datt would withdraw in his favour and he should pay the expenses incurred by him on the further condition that Mr. Batra should also withdraw in his favour and that they both would work for him in the election. He complains that neither of them had worked for him or helped him in the least and yet the expenses of Mr. Datt were paid to him. He admits that his contribution to the sum of Rs. 3,000 was only Rs. 400 and the rest was made up by Th. Jagmal Singh who had collected it from various persons. As regards his own contribution of Rs. 400, he says that he collected it from some persons whom he, however, did not disclose. While in the witness box, he volunteered (*i.e.* said without any asking) "as displaced persons had not voted for me I approached Shri Tara Chand to settle the sum of Rs. 3,000 which had been paid to him on the understanding that after the withdrawal of Mr. Datt refugees would vote for me. I got back Rs. 444 only and Sh. Tara Chand conveyed that the matter had been decided and the rest of the amount was adjudged as expenses of Mr. Datt and therefore paid to him". He is evidently conspicuously silent about Ch. Badlu Ram as well as about the security deposit of Rs. 1,000.

Th. Jagmal Singh P.W. 81, who seems to have come to the rescue of Th. Nasib Singh in the matter of collecting the amount of Rs. 3,000 says that in the last election he supported Th. Nasib Singh and Ch. Badlu Ram both and used to procure votes for both. This is of course absurd. When asked to explain how the sum of Rs. 3,000 had been made up, he said that he had got Rs. 400 from Th. Nasib Singh, Rs. 1,000 from Ch. Badlu Ram, Rs. 100 from his own pocket while a sum of Rs. 1,500 had been taken by him from the funds of 'Rajput Panchayat'. This *Panchayat* was disclosed for the first time by this witness and it is not easy to make out what it really means. According to him this fund belongs to 5 or 6 villages of Rajputs and he is the *chaudhri* and *Khazanchi* (treasurer) thereof and therefore he paid Rs. 1,500 out of it to help Th. Nasib Singh. He admits that he maintains no accounts of the fund and he does not remember what was the total amount in the fund on that day. He further admits that he never deposited any fund of the *Panchayat* in any bank but he always kept it in his house. According to him this amount of Rs. 1,500 is still outstanding.

The inclusion of Ch. Badlu Ram in the contribution is nothing but a tissue of false-hoods. Jagmal Singh says that no one was present when Ch. Badlu Ram paid him Rs. 1,000. This payment, according to him, was made before the second *Panchayat* but he failed to give out in that *Panchayat* that he had already been paid Rs. 1,000 by Ch. Badlu Ram. He claims to have attended both the *Panchayats* and states that in both the *Panchayats* the only mention made of Ch. Badlu Ram was that if Mr. Datt would withdraw then his votes should go to Sh. Badlu Ram or Th. Nasib Singh. This is all nonsense and the evidence of this witness is full of lies.

Bahadur Chand P.W. 31 was the first witness to introduce Ch. Badlu Ram in the above picture. He states that 2 or 3 days before the polling started Ch. Badlu Ram alongwith 5 or 6 persons of his party met him at a flour mill and asked him to support him since Mr. Datt had withdrawn on receipt of Rs. 3,000 and since he had also contributed to that amount of Rs. 3,000 but he replied that he could not change sides and would support Ch. Ram Sarup, the petitioner. It is strange that Th. Nasib Singh, the hero of this picture, did not bring in Ch. Badlu Ram at all. This is very significant. No less significant is the fact that not a single witness deposes to the payment of Rs. 1,000 (security) by Th. Nasib Singh, as alleged by the petitioner in his pleadings.



The following factors deserve notice while appraising the petitioners evidence:

- (i) There is no satisfactory evidence to prove the source of the money stated to have been passed on to Sh. Tara Chand arbitrator and eventually paid to Mr. Datt. The evidence on this point is highly conflicting. Th. Nasib Singh, the sole person concerned with the matter, contributed only Rs. 400 towards the sum of Rs. 3,000 and has since been paid back Rs. 444, if Sh. Tara Chand is to be believed. Th. Jagmal Singh, who collected Rs. 2,600 as stated by him, cannot be believed as his statement has been found false. Further, there is not a word of evidence to suggest that Th. Nasib Singh or Th. Jagmal Singh ever paid the security of Rs. 1,000 to the arbitrators.
- (ii) There is no satisfactory evidence of the actual payment of the money to Mr. Datt. Sh. Tara Chand merely says that the sum was paid to him but he carefully or tactlessly avoids saying that it was he who paid the amount to him. Thus there is absolutely nothing on the record to show who paid the money, when and where. Since these points were not deposed to by the arbitrator, he was not cross-examined about them. The second and the senior arbitrator, Shri Kashmiri Lal Sehgal, was not examined in the court at all though he was an important witness.
- (iii) The name of Mr. Batra was introduced at a later stage of the case, because it was felt that he was also a displaced person and his presence in the contest will not fit in the story as put in court. His name, as already stated, was significantly omitted from the details of the case as given in the list.
- (iv) A very clumsy attempt has been made to entangle Ch. Badlu Ram in this affair and Th. Jagmal Singh has been made to say that Ch. Badlu Ram had also contributed Rs. 1,000 towards the pool money. It is Th. Nasib Singh's case, and it was also admitted by the witnesses of the petitioner—that Mr. Datt was made or was persuaded to withdraw from the contest in favour of Th. Nasib Singh. If so, it is impossible to believe that Ch. Badlu Ram would be a party to the withdrawal and would also contribute no less than Rs. 1,000 towards the common fund. It was in his interest that Th. Nasib Singh and Mr. Datt should not pool their resources and make common cause against him, rather his interests would have been better served if both had fought the election and thereby split up the votes of the refugees. It is a down-right lie to say that Ch. Badlu Ram had any share in this contribution.
- (v) Mr. Datt was not examined in the case by either party. The petitioner's counsel argues that it was futile for him to examine this person as he would have never admitted to have accepted the bribe and thereby exposed himself to penalties under the Electoral Law. The respondent also did not examine him on his behalf because he was not presumably sure of the position which this man would take in the witness box. Be that as it may, we are asked in this case to condemn Mr. Datt without hearing him. In this connection I am reminded of the well known maxim "Audi Alteram Partem—no man should be condemned unheard". Mr. Datt is no doubt co-respondent in this case but he is proforma and no relief has been claimed against him. My own feeling is that the petitioner in his own interest should have examined him and then sought the permission of the tribunal to cross-examine him if he appeared to be hostile or appeared to be hiding the truth. In that event the Tribunal would have been able to judge the demeanour of the man whom we are asked to condemn as bribe-taker in this case.

There is no doubt that some sort of negotiations took place to persuade Mr. Datt to withdraw from the contest and the small number of voters polled by him show that he did not fight the election as keenly as he should have, but there is no satisfactory proof on the record to show that he had been paid a bribe of Rs. 2,550 odd in consideration of his withdrawal from the arena. In the circumstances I cannot hold that this instance of bribery is proved.

#### LIST No. 2

This list mentions 6 cases in which the respondent himself or his workers are said to have exercised undue influence upon several persons. "undue influence", according to Section 23(2) of the Representation Act, means any direct or indirect interference or attempt to interfere on the part of a candidate or his

agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right. This constitutes a major corrupt practice.

(1) It is alleged that Sh. Dev Raj Sethi threatened Ch. Ram Bhaj Advocate, nephew of the petitioner, at Kalanour on 1st January 1952 when polling was going on, and indeed slapped him on his face and thereby interfered in the free exercise of the voters. The relevant facts, subject to minor differences between the parties, are not in dispute and may be briefly stated.

Sh. Dev Raj Sethi (D.W. 12) was a candidate to the last Punjab Assembly from the Rohtak constituency and fought the election on the Congress ticket. His polling finished on the 11th January hereafter he was free to move about. Since the respondent was also fighting on the Congress ticket Sh. Dev Raj went to Kalanour on the evening of the 10th January, did propaganda for him till late in the evening, and returned to Rohtak where he resides, at about 11 p.m. On the next morning i.e. on the polling day he again went to Kalanour and got down from his station wagon at about 8.30 a.m. near the polling station. Several displaced persons collected around him, as is natural on such occasions. That place was later found to be 125 yds. from the polling booth. A constable in uniform, on seeing the crowd, approached Mr. Sethi and told him to move away as more than 4 persons could not collect there, upon which he replied that he knew the law. Soon after Ch. Ram Bhaj P.W. arrived and said "this is the law", upon which Mr. Sethi replied that he also knew the law. Sh. Ram Bhaj told him not to chatter (*Bakwas mat karo*) and thereupon Mr. Sethi lost control and gave him a slap on his face with his left arm. The police on duty acted promptly and took both Mr. Sethi and Sh. Ram Bhaj to the police station and detained them till about 2.30 or 3 p.m. While at the police station Mr. Sethi, so he says, apologised to Mr. Ram Bhaj for the unfortunate incident. A wireless message had in the meantime been sent to the Deputy Commissioner and the Superintendent of Police who were on election tour at Bahadurgarh and they both rushed to the spot and reached there shortly after 4 p.m. i.e. after the polling was over. The S. P. S. Ajeet Singh, P.W. 1, states that Mr. Sethi felt repentant and said that it was his mistake to have slapped the gentleman opposite. These officers, very properly in my opinion, did not enquire into the incident at the spot because the situation, in the words of the police chief, was tense and it was not proper to probe deep into it at that moment.

Mr. Dev Raj was challaned under Section 131 of the Representation Act as well as under Sec. 186 I.P.C., but was acquitted in both these cases: by the Sessions court on appeal in the first case and by the Trial court in the second case.

The above incident appears to be quite spontaneous and un-premeditated. The respondent had absolutely no hand in this matter. Mr. Dev Raj appears to have resented the interference of Ch. Ram Bhaj and lost self control when the latter asked him not to chatter. The incident, no doubt very unfortunate, must have caused commotion, but since both the persons concerned had been taken to the police station and detained for a very considerable time, the incident did not take an ugly turn.

The above incident no doubt constitutes a minor corrupt practice under Section 124, but it can only invalidate the election if it materially affected the result of the election. This is the real point to decide under this issue.

According to Ch. Ram Bhaj his workers and voters got confused and dispersed on the above happening. Ch. Abhe Ram Advocate, P.W. 11, states that he was informed by the workers of the petitioner that their voters, fearing more trouble, had rushed away from the place on account of the morning incident. This statement is no doubt hearsay because the witness has no personal knowledge and he did not even disclose the names of the workers who had informed him. Ch. Sri Chand Advocate, P.W. 12, who was a supporter of the petitioner, reached Kalanour that day at about 2 P.M. and found one present in the petitioner's camp. He says that he saw some persons standing at some distance and when he asked them to go and vote they replied that they did not want to take the risk of being beaten. He, however, did not disclose who those persons were. Further he admits that he did not ask the police to help the voters to cast their votes.

Malik Sant Lal Advocate, P.W. 15, states that he reached the place shortly after the incident and found the workers and voters of the petitioner terrified. He adds that he also got frightened and slipped away to Delhi at about 9 a.m. in a bus which runs from Bhiwani to Delhi. This was a strange attitude on the part of an Advocate to adopt. He too does not disclose the workers and voters whom he found terrified after the incident.

Ch. Hathi Singh, P.W. 30, was the polling agent of the petitioner at Kalanour on that day. He was sitting inside the polling station when the above incident took place outside, and when he came out he found, as he says, the camp of the petitioner deserted and his voters dispersing and saying that Ch. Ram Bhai had been slapped and they could not say what would happen thereafter. The witness, however, cannot name a single voter whom he had seen dispersing. The witness further admits that about 2½ years ago he had fought the Marketing Committee's President's election against the present respondent but had lost it.

Ch. Bahadur Chand P.W. 31, whose testimony has already been referred to under the previous issue, states that he was present when the above incident took place, that there were some 50 or 60 voters then present in the camp of the petitioner out of whom about 30 voters had been brought by Sh. Sant Lal Advocate, but soon after the incident Malik Sant Lal slipped away and he i.e. the witness also slipped away to his flour-mill and the voters dispersed. It is significant that Malik Sant Lal who stated that he had brought 30 voters for the petitioner, did not disclose the names of any voter said to have dispersed because of the incident.

The respondent produced a number of witnesses to show that the above incident had no effect whatsoever on the voters and that the polling continued in the normal way. In this connection reference may be made to the evidence of Sh. Vidya Dhar (D.W. 5) Sh. Dev Raj Sethi (D.W. 12), Sh. Tehla Ram (D.W. 25), Bhagwan Singh (D.W. 26), Des Raj (D.W. 27) and Mansa (D.W. 28). Shri B. R. Nagpal, the District Food Controller, D.W. 54, who was the Presiding Officer at the above polling station. He states that as soon as he learnt of the clash he came out of the polling station and made a round of the various camps of the candidates in order to create confidence amongst the public and thereafter polling went on in the normal course. He says that he found nothing unusual at the alleged place of occurrence but on the other hand saw normal activities among the voters going on.

It is thus clear that no voter has been named or produced to show that he got frightened by the above incident and could not poll his vote. Kalanour was admittedly a stronghold of the respondent because it is populated mostly by displaced persons and a majority of them voted in the respondent's favour. Thus it is not established at all that the above incident materially affected the election and thus it cannot invalidate the election.

No. 2.—On 16th January 1952 the respondent is alleged to have threatened Risala Chaukidar P.W. 68 with dismissal at Khidwali in case he did not vote for the congress candidate. On this point there is the solitary statement of Risala himself. His evidence is not convincing and the petitioner's learned counsel did not, very properly in my opinion, press this instance before us. It thus goes off for want of proof.

No. 3.—Mai Dhan P.W. 6 is the Jamadar Chaukidar of V. Khadwali and he states that the respondent asked him to work for him and threatened that if he did not work he would be removed from Jamadari, upon which he replied that he would much rather obey than lose his job. He says that he went to the sweepers and told them that they had to vote for Ch. Badlu Ram and then he went to the Chamars for the same object. It is significant that no sweeper or Chamar was examined to bear him out. Though the witness claims to have worked for the respondent yet the ballot box shows that he voted for the petitioner. The cat is thus out of bag. It is impossible to believe that a person who voted for the petitioner would lend his support to the respondent and collect votes for him. There is no other evidence on the record and consequently I hold that this instance is not proved.

No. 4.—On 31st February 1951 at Garnauthi, it is alleged, the respondent threatened the *Dhanaks* of the village including Bhola with the stoppage of their ration in case they did not vote for him. More names of the *Dhanaks*, other than Bhola, were added to the original list, when it was subsequently amended on 25th October 1952 and the names of Dutia, Matu, Molar, Bhola and Ratia disclosed. None of these persons, be it noted, was examined by the petitioner but reliance was placed on the testimony of Molar Jat P.W. 32 and Bhagwana Jat P.W. 36. Molar admits that he supported the petitioner at the last election. His evidence is, therefore, tainted and unreliable. Equally unreliable the evidence of Bhagwana who is a change witness. He states that he was going to take yarn from his *Dhanak* Bahra and there he heard the respondent and his brother Ch. Piyare Lal tell the *Dhanaks* that they must vote for him otherwise their ration cards would be stopped because it was Congress Raj. It is important to observe that the congress party was not in power in the State in those days and the

President's rule had supervened. Again, no complaint of the alleged threat was made to any officer during the polling days. The two witnesses examined by the petitioner are not disinterested and reliable and this instance stands not proved.

No. 5.—the respondent is alleged to have threatened Puran pensioner P.W. 33 with stoppage of his pension on 1st January 1952 at Garnauthi in case he did not vote for the Congress candidate. Puran is a military pensioner and gets Rs. 11 P.M. as pension. His version is that a day before the polling started Sh. Badlu Ram and Sh. Piyare Lal came to him in the evening and enquired from him for whom he would vote and he replied that he would vote as he liked and that no pressure could be put on the voters upon this Ch. Badlu Ram threatened that it was Congress Raj and he would get his pension stopped unless he voted for him. The witness says that he got threatened and agreed to vote for him. He, however denies to disclose for whom he had voted in the election but the ballot box shows that he had voted for the petitioner. This fact alone is enough to throw his statement entirely over board. Molar Jat P.W. 32 also supports the above witness but his testimony has already been disbelieved. This instance is clearly not proved on the record.

No. 6.—Kanhya Dhanak of village Bhali, P.W. 69, has got a licensed gun. He states that about 10 days before the polling one day Ch. Badlu Ram came to his village and asked him to help him in his campaign saying that otherwise he would get his arms licence cancelled, whereupon he replied that he would think over it. He adds that he did not work for the respondent in anyway after that. The voters' list shows that this witness had no vote at all, though he says that he voted for whom-so-ever he liked and denied to disclose for whom he voted. Kanhya Lamberdar P.W. 70, and Neta Jat P.W. 66 were the other witnesses examined on this point but their evidence does not improve the matter. Kanhya himself admits that he did not work for the respondent and it appears to me that no threats were held out to him by the respondent at all. This instance is also not proved.

Thus none of the instances quoted in this list are proved on the record.

#### LIST No. 3

This list mentions 4 cases of personation but no evidence was led on the last 3 and only one instance i.e. the first was pressed before us. This relates to the case of Mst. Saluman of village Balab where voting took place on 11th January 1952.

It appears that Mst. Janat P.W. 25 of this village was enlisted as a voter and she did exercise her right and cast her vote. She states that Sarupa and Maya Ram, supporters of the petitioner, led her to the polling booth and asked her to vote for him.

Mst. Saleman P.W. 24, though a resident of the above village, was not enlisted as a voter but, it is alleged, she was made to impersonate Mst. Janat and was given a *kachi parchi* or identity card Ex. P.A. for this purpose from the congress camp. She went to the polling booth and asked for ballot paper saying that she was Mst. Janat, but Mst. Janat had already exercised her vote and in this way the impersonation was easily detected. No ballot paper was actually issued to this woman and she was challaned and subsequently fined Rs. 25. Her statement was recorded at the polling station sometime in the afternoon by Sh. Mangat Rai, Naib Tehsildar, P.W. 8, who was then on duty at the polling station. In this statement Mst. Saleman disclosed that she had been brought to the polling station by Sh. Hari Singh and Sh. Jawala Singh and persuaded to vote for Ch. Badlu Ram and the *Kachi Perchi* was given to him by Sachda Nand, a worker of Ch. Badlu Ram. Ch. Hari Singh (D.W. 17) is the brother-in-law of Ch. Badlu Ram while Jawala Singh D.W. 16 is the first cousin of Hari Singh. They both denied to have ever led this woman to the polling station or prevailed upon her to vote for the respondent.

During the evidence stage it was all along believed that Mst. Janat had voted for the petitioner and Mst. Saluman had been given the *kachi perchi* from the congress camp and hence persuaded by the respondent's people to impersonate her (Mst. Janat) and vote for the respondent, and the petitioner's learned counsel triumphantly argued on this assumption that it was impossible for his client to persuade Mst. Saleman to impersonate Mst. Janat and thereby spoil his chances of success when the latter had already voted for him. This was no doubt a very plausible argument, but when we saw the ballot paper of Mst. Janat we found that she had voted for the respondent and not for the petitioner. Further the *Kachi Perchi* Ex. P.A. (attached to the criminal file), which Mst. Saleman is

said to have got from the Congress camp and gone armed therewith to the polling station, was found to bear the symbol of the petitioner. This evidently upset the calculations of the petitioner's counsel and he felt so much flustered and bewildered over these revelations that he advanced no more argument on this point at all.

The position now is that Mst. Janat voted for the respondent and Saliman impersonated her and went to the polling station to get a ballot paper, armed with the *kachi perchi* or identity card of the petitioner. This evidently shows that she had been deputed by the petitioner or his people and not by the respondent or his people to take a ballot paper in the name of Mst. Janat.

It is thus clear that Mst. Saliman was not put up by the respondent and he is, therefore, not guilty of the major corrupt practice of false personation.

#### LIST No. 4(A)

In para. 6 of his petition the petitioner alleged that the returned candidate, by himself and by his agents, had been guilty of major corrupt practices under Sec. 123(6) R.P. Act 1951 of hiring and procuring two trucks, two station wagons, one lorry and one car for the conveyance of voters to and from the polling booth, and mentioned full particulars of these corrupt practices in lists 4(A) and 4(B). In the list (A), we are now dealing with, he has mentioned 4 motor vehicles said to have been used by the respondent for the conveyance of his electors. Of these, station wagon No. D.L.H. 8907 belongs to the respondent himself and was admittedly used by him for his propaganda during the election days. Whether this was used for conveyance of electors as well will be discussed in the next list. The question now is whether he had engaged the remaining vehicles which the petitioner alleges but he himself denies.

The respondent is alleged to have hired a station wagon of military type, No. PNR 458, for the use of his electors from Hem Singh P. W. 23. One Prithi Singh was said to be its driver but he was not produced in court. This vehicle originally belonged to Shri Bhagwan Singh P.W. 27 who had purchased it from the Employment Exchange Rohtak for Rs. 1,675 for Shri. Hem Singh P.W. about a month before the polling started and sold it to him on the next day. Shri Bhagwan Singh states that after 2 or 3 days Ch. Badlu Ram and Prithi Singh driver came to him and took the station wagon on hire for propaganda work at Rs. 13 or Rs. 14 per day. According to him Ch. Badlu Ram kept the wagon for his use for about a month and returned it after the election was over. Prithi Singh was its driver even before the purchase, and, according to the witness, the driver used to give the hire-money to Hem Singh P.W. direct and not to the witness. The witness cannot, therefore, say how much the driver paid to Hem Singh as hire money. The driver had been engaged by Hem Singh at Rs. 60 p.m. The wagon had of course been registered as private vehicle. The witness further admits that no body else was present when the hire money was settled with Ch. Badlu Ram. He again corrected himself and deposed that the station wagon was lying in the workshop of Shri Ram Pershad Mistri for repairs and the aforesaid talk took place in that workshop in the presence of Shri Ram Pershad. Ram Pershad, it is significant, was not examined to bear him out. This in brief is the evidence of Bhagwan Singh.

Hem Singh P.W. 23 contradicts the above witness in material respects. He is a compounder of Dr. M. R. Gupta, retired Civil Surgeon, Rohtak. He admits to have purchased the station wagon from Bhagwan Singh about 2½ months before the election and says that after purchasing the wagon he entrusted it to Bhagwan Singh for plying on hire and the latter used to give him the net income thereof. He does not know which of the candidates had used the vehicle but states that Bhagwan Singh P.W. told him that it had been used by some candidate for his election propaganda and that a sum of Rs. 450 had been realised as hire of this wagon used during the election, out of which a sum of Rs. 250 had been spent on its repairs, and, consequently the balance of Rs. 200 as net income was paid to him. He denied to have engaged Prithi Singh as driver or to have received any hire money from the driver direct rather, according to him, Prithi Singh had been engaged by Bhagwan Singh and he drew his pay from him. The driver rendered no account to this witness of the vehicle, nor did the witness enquired from him about it.

This is all the evidence on record about the hiring of the above wagon by Ch. Badlu Ram, and this evidence is obviously quite discrepant and conflicting and on its strength hiring cannot be held proved. Doubtless, this wagon was captured with certain electors at Kharak-kalan by the police on 18th January 1952 but this fact will be dealt with in para. 10 of list No. 4(B). Suffice it to say

at this stage that the hiring or the use of the wagon by Ch. Badlu Ram is not proved on the record.

Truck No. PNR 514 belongs to and is registered in the name of Sis Ram, father of Lal Chand D.W. 2. Lal Chand is Badlu Ram's father's sister's son and he deposes that this truck was never used for Ch. Badlu Ram in this election. It is common ground that this truck was requisitioned by the police during the election days and it remained in their service right from the 2nd Jan. to the 18th Jan. Thus it could not have been used by the respondent in those days for his voters. One Dalip Singh is said to be its driver but he was not produced. There is no evidence on the record, save that of the petitioner himself, to show that this truck was used by the respondent for his propaganda before the polling started or before the vehicle was requisitioned by the police.

Truck No. PNR. 754 originally belonged to Master Deep Chand D.W. 41 but he sold it to Ram Singh D.W. 9, as he says, in May 1951, for Rs. 10,000. When he received the money he handed over the truck as well as necessary papers to the purchaser and he also signed a transfer form in his favour. According to him, Lal Chand's father, Sis Ram, had no concern with it at all. The statement of Ch. Ram Sarup petitioner P.W. 82 to the effect that the vehicle belonged to Lal Chand and not to Deep Chand is not supported by any evidence on the record.

Ram Singh D.W. 9 claims to have purchased the aforesaid truck from Deep Chand some 4 or 5 months before the polling started in this Constituency. According to him the truck met with an accident on 16th November 1951 when it was being driven by Budle and the driver was challaned by the police and convicted and sentenced to 1½ years imprisonment but was acquitted on appeal. During the investigation and the trial of the case the truck was given to him by the police on *Superdari* and he says that during the election days the truck remained with him and was never given to any candidate for propaganda work.

S. I. Chanchal Singh P.W. 3 states that he used to tour the villages in those days and come across a station wagon of aluminium colour No. 8907, one station wagon of Aluminium No. PNR 458 and one truck No. PNR 754, said to be of Ch. Badlu Ram, and one station wagon No. 441 and one other station wagon whose number he did not remember, said to be of Ch. Ram Sarup. His version is that he used to see these vehicles being used by the candidates' workers but he could not disclose the name of any such worker or give any other data to enable the court to verify his assertion. He did not note down the numbers of these vehicles anywhere and it is strange that he should remember these numbers more than a year after the election. Anyhow his statement is not corroborated by any other witness and it is therefore not safe to rely upon his solitary testimony. Further, no body has come forward to state that truck No. 754 belonged to him and he hired it to the respondent. In the circumstances the hire of this vehicle by the respondent is not proved.

#### LIST No. 4(B)

In this list are mentioned 15 instances in which the respondent or his agents or his workers are said to have used certain motor vehicles for the conveyance of electors from their villages to the polling stations and back to their homes during the polling days. One of the vehicles mentioned in the list is PNR 514 which admittedly had been requisitioned by the police during the election days. Thus this vehicle could not be used by the respondent for conveyance of his electors. The petitioner's learned counsel argues that his witnesses might have mis-read the number of the vehicle actually used by the respondent's workers, but this argument is the result of an after-thought. It has been specifically alleged in the pleadings that the motor PNR 514 was used by the respondent or his workers for the aforesaid purpose and the petitioner cannot be allowed at the argument stage to resile from his definite averments. In this view of the case the instances No. 3, 4, 6, 7 fall to the ground and need not be discussed. The counsel has conceded that he has produced no evidence in support of instances 12 to 15 and they therefore go off for want of evidence. The rest are discussed below:—

No. 1.—Lakhi P.W. 34 is alleged to have conveyed certain voters in the respondent's own car from V. Chiri to village Garnauthi on 1st January 1952 i.e. a day previous to the polling.

Lakhi denied in the first instance to have gone to V. Chiri before the election but then he corrected himself and deposed that a day before the polling started in the village he was asked by Ch. Badlu Ram to go in his car to V. Chiri, 20 miles off, and bring 5 or 7 *Chamar* voters from there. He complied and reached there at

about 9 P.M. (bed-time) and brought the *Chamars* who were working at a brick-kiln at Chiri. The *Chamars*, according to him, were Hazari, Mange, Sheokaran Singh, Angarh and two youngmen whose names he did not remember. None of these persons was examined in court to bear him out. The witness further states that Molar P.W. 32 and Puran P.W. 33 were present when the respondent asked him to bring the aforesaid *Chamar* voters from V. Chiri. Both Molar and Puran are related to the witness in the second or third degree and they were admittedly the supporters of the petitioner. It is hard to believe that respondent would make the request to the witness in the presence of his adversary's supporters. Again, the witness states that Molar had also asked him to bring the voters from V. Chiri. This is again unbelievable, knowing as we do, that Molar was the petitioner's supporter. There is no doubt that the witness voted for the respondent in the last election, but he appears to have been prevailed upon by his cousins Molar and Puran to depose in the petitioner's favour in this case.

Molar P.W. 32 is silent on this point. Puran P.W. 33 supports the above witness and claims to have deputed him i.e. Lakhi at the respondent's instance to Chiri to bring his voters. This is not Lakhi's case. We saw the ballot box and found that this witness had voted for the petitioner. His evidence does not, therefore, ring true.

Bhagwana Jat P.W. 36 claims to have seen the aforesaid motor coming with Lakhi and some *Chamars* of his village sitting in it. He says that when the motor was on the turning it stopped a while and on his inquiry Lakhi told him that he had brought the *Chamars* from village Chiri, where they were working at a brick-kiln, to cast their votes in favour of the respondent.

Hardwari P.W. 37 deposes that on the night preceding the polling in his village he was at his *Bauthak* when he saw the lights of a motor vehicle and he came out to see what the matter was and saw motor standing near the place of sweepers, and on his inquiry Lakhi P.W. informed him that he had brought *Chamar* voters from V. Chiri. He claims to have seen Hardwari, Mange, Mange's son, Sheokaran, Sheokaran's son all *Chamars* of the village, getting out from the vehicle, but, as already observed, not one of them was examined to support this allegation.

Ch. Badlu Ram D.W. 55 and his elder brother Ch. Piyare Lal D.W. 52 denied to have lent this motor to Lakhi for the conveyance of the voters.

In my opinion, the evidence in support of this instance falls short of proof and I, therefore, hold accordingly. I may also add that no complaint was made to the Presiding Officer about the illegal use of the vehicle.

No. 2.—Deryao Singh D.W. 44 is alleged to have brought some voters of the respondent on 4th January, 1952 in motor vehicle No. 458. Deryao Singh's version is that he was present at the polling station when the respondent and Piyare Lal approached him and asked him to bring his voters from Maraudhi and they placed a car of military type, whose driver was said to be one Prithi Singh, at his disposal; he went in the motor and brought Sheokaran Singh, Ram Singh Chamar, Khati, Prebhu Kumar, Sant Lal refugee and some others numbering about 20 in all. None of these persons, named by the witness, was examined to support him. Again, the witness, as the ballot box shows, voted for the petitioner. This is indeed very significant, for it is hard to believe that a voter and supporter of the petitioner would collect voters of the opposite party and bring them from their village to the polling station.

Phulu Brahman of Marodhi P.W. 45, who was to cast his vote that day at Garnauthi, claims to have travelled in the aforesaid motor at the instance of Deryao Singh, but Deryao Singh does not name him as one of the voters brought to the polling station by him. According to this witness, Sant sweeper and Moman Brahman were also brought to the polling station in the car, but these two were also not examined in this court. The witness claims to have voted for the respondent at the election.

Subedar Nand Ram, P.W. 46, is a military pensioner and states that he was about to leave on his cycle for Garnauthi to cast his vote when he saw a station wagon and Deryao Singh P.W. standing there. Deryao Singh asked him to accompany him in the wagon but he replied that he had his cycle. He names certain *Chamars* who were sitting in the car but, as already observed, no one was produced in court. The witness declines to disclose for whom he had voted but the ballot box shows that he had voted for the petitioner. He is thus his man and is out to support him.

Hira Singh P.W. 35 deposes that he was in his fields when he saw a car of Khaki colour and of military type bring some persons from Maraudhi side but he could not identify the passengers in that car though he used to see that car with Ch. Badlu Ram and his workers previously in the village. This evidence is quite indefinite and inconclusive.

As already observed, it is almost impossible to believe that Deryao Singh, a voter and helper of the petitioner, would collect voters of the opposite party, and it is clear that the evidence adduced is utterly insufficient to prove this instance of malpractice.

No. 5.—It is alleged that *Dhanaks* of V. Kabulpur, who had to cast their votes at Retoli, were working as labourers in Delhi and Net Ram P.W. 78 and one Manphul were sent by the respondent to fetch them. They went in the respondent's car upto Rohtak and there they caught a train and brought those voters by train upto Rohtak and thence from in the respondent's car to the polling station.

Net Ram's version is that on the night preceding the polling Ch. Badlu Ram came to his house alone at about sleeping time when Manphul was also there and asked them both to go to Delhi for the aforesaid purpose and gave them Rs. 50 to meet the travelling expenses. They travelled by mail train from Rohtak to Delhi and on detraining at Delhi Kishanganj station he (witness) left for New Delhi to see his son Jaikaran and left a word with Manphul that he should collect the voters and meet him at the railway station at noon. Manphul thereupon collected the voters and brought them to the railway station where the witness joined them and they all came to Rohtak and then to the polling station by the respondent's car.

It will be seen that the task of collecting the voters and disbursing the amount was allotted to Manphul who, it is significant to observe, was not examined at all. His parentage was not given. Net Ram acted as a mere spectator and he rather utilised the visit to see his son who was employed in New Delhi. It is rather funny to find that the man, specially deputed to bring voters from a particular station, should neglect his duty but utilised the visit for his own purpose. Funnier still is his admission that he could not vote at the polling station because Ch. Badlu Ram had kept him busy in his work and he got no time to cast his vote. This sounds very strange. Here is a man who was sent specially to bring voters from Delhi and he went there in compliance therewith but he was so careless as not to cast his own vote for his master. Again, the witness could not disclose the names of *Dhanak* voters said to have been brought from Delhi excepting one Prithi who was not produced in court. The evidence of Net Ram is wholly unreliable and utterly unworthy of credence.

Equally unreliable is the testimony of Hergobind P.W. 77, uncle of the above witness. He says that his nephew was sent in his presence by Ch. Badlu Ram to Delhi to fetch the voters and he claims to be a supporter of Ch. Badlu Ram in the last election, but, paradoxical as it may sound, he actually voted for the petitioner. Jogi Ram P.W. 79 is another witness on this point. He says that he was going to Kabulpur from his village Ratoli in the afternoon when he saw a lorry coming. He stopped and saw 18 *Dhanaks* of Kabulpur coming out of the lorry accompanied by Net Ram. He is definite that he did not see anyone else with them and thereby he omits the name of Manphul whom he already knew. Out of the *Dhanaks* he could name Chotu, Amar Singh, Khema and Ram Bhagat though none of them was produced in court. This is all.

The evidence thus adduced in support of this instance is not only meagre but unreliable as well and cannot be believed.

No. 8.—The respondent is alleged to have brought some voters on 15th January 1952 in motor vehicle No. PNR 458 from Kathura and Kahna to Nigana where polling was to take place on that day. Nigana is 35 miles from these villages. Some *Chamars* of Nigana were working in village Kathoria and the allegation is that the respondent had gone himself that day to bring them.

A few witnesses were examined to prove this instance. Sisu Jat, Lambardar of Kathura, P.W. 52, says that about one *paher* before sun-rise he was at his *Kohlu* (sugar-cane crusher) when a car of Khaki colour came and stopped because it could not go further; he enquired from the driver what he wanted whereupon he replied that he had to go Lelu and Rup Chand *Chamars*, and he told him that he could meet Rup Chand at the next *Kohlu*. The driver then went towards the other *Kohlu* leaving the car behind. The witness does not know what happened thereafter. The witness throws no light as to whose motor car it was or who



was the driver and in the absence thereof it is difficult to connect the motor vehicle with the respondent from this evidence. He further admits that he did not talk of this instance to any body.

According to Rup Chand P.W. 59, he was a supporter of the petitioner and he wanted Sisū to vote for the petitioner. This shows that he is not a disinterested witness.

Rup Chand P.W. 59 and his cousin Lilu P.W. 60, both Harijans, belong to Nigana but were working at Kathura in those days. Their version is that they were enlisted as voters at Nigana and early in the morning they along with 12 or 13 other *Chamars* were brought to Nigana by the respondent in a car. Rup Chand states that the car stopped on the way at Kahna where it picked up two other *Chamar* voters, but Lilu contradicts him and states that the car went straightway and did not stop at Kahna and did not take any person therefrom. According to Rup Chand, the voters reached Kahna one *paher* after sunrise and were taken to the respondent's camp and given *kachi parchi* or identity card by the respondent's Munshi and then they cast their votes, but according to Lilu they all first went to *Chamars* living at Nigana and after smoking *Huqa* etc. they came to the polling station and got *kachi parchi* from the respondent's camp. Both the witnesses are men of straw and could easily be purchased by the party concerned.

Maman P.W. 61, has no personal knowledge of this affair. He says that he was going to fetch his *Chamar* Jawala and on the way he met Lilu and Rup Chand and three women and was informed by them that they would go to Nigana in a motor of the respondent which was standing near the school. He did not see the motor car himself but he went his way. Likewise Jawala P.W. 63 was produced to prove an admission of Lilu *Chamar* who told him that he and others would vote for the respondent and would go when his transport would come to take them.

Thus this instance depends for its proof on the sole testimony of Rup Chand and Lilu *Chamars* who, in my opinion are not disinterested and reliable. Although they are admitted to have voted for the respondent at the last election yet they appear to have been won over by the petitioner. Anyhow it is not safe to rely on their testimony or hold the respondent guilty of the mal-practice. I, therefore, hold that this instance of corrupt practice is not proved.

No. 9.—No evidence was led in support of this instance and it was consequently not pressed before us.

No. 10.—On 18th January 1952 S. Bachan Singh, D.S.P., P.W. 2 was present at Kharak Kalan polling station, where polling was going on, and in his presence one station wagon, No. PNR 458, arrived at about 9-30 A.M. and some 10 or 12 persons got down from it. He states that on his inquiry some 7 or 8 out of the passengers told him that they were voters and had come to cast their votes. One of the passengers was Sri Ram, a teacher of Nigana, and he had a voters' list in his hand and the police officer took the list (Ex. P.W. 2/1) from him. He recorded the statements of all the passengers as well as the driver Prithi Singh by name, vide Ex. P.W. 2/1 to Ex. P.W. 2/14. They stated that they had travelled by the truck and had paid no fare and had been made to get down 2 furlongs from the polling station while the driver maintained that he had charged them fare Rs. -/2/- from some and Re. -/3/- from others. He also disclosed that the car had been taken by Ch. Badlu Ram candidate for his election and that it was a private registered vehicle and could not be used as taxi. Sri Ram's statement was that the voters' list had been given to him by one Lal Chand Jat who was a worker of Ch. Badlu Ram candidate and that no voter had paid any fare to the driver in his presence. The D.S.P. intended to challan the driver for contravening the provisions of the motor vehicle Act and using a private car on hire, but on further thought he gave up the idea as he considered that there would be no proof to bear the charge against him. He drew up the report Ex. P.W. 2/16 and sent it up to the Superintendent police. In this report he disclosed that one Piyare Lal, said to be a brother of Ch. Badlu Ram, had come to him to take back the copy of the electoral roll that had been taken into possession from Sri Ram a passenger of the truck. While in the witness box, the D.S.P. further stated that on the next day Ch. Badlu Ram and Professor Sher Singh had approached him to hush up the matter by saying that such things were common in election to which he replied that he had already made a report to his superior officer. Both Prof. Sher Singh, D.W. 1 and Ch. Badlu Ram, D.W. 55 of course, denied stoutly to have approached this police officer in the manner stated by him.

In support of this instance there is the solitary statement of the above police officer and various interesting points of law have been addressed to us in this connection. For instance, none of the voters or passengers, said to have alighted from the truck, was examined in court, and it is, therefore, urged that their statements recorded by the police officer are not admissible in evidence and are at best hear-say. There is no doubt about the soundness of this view but the petitioner's counsel replies that the statements were exhibited without any objection and, therefore, their admissibility cannot now be questioned. The reply to this argument is that the respondent's counsel, then in charge of the defence, thought that these statements were public documents and were therefore admissible in evidence without proof, but this was erroneous. Under the rules of evidence mode of proof of a document can be waived by a party but not the admissibility or the illegality document. In the present case the statements recorded by the police officer are not admissible in evidence at all because their deponents have not been examined in court. I, therefore, agree with the respondent's counsel and hold that the statements have not been legally proved and cannot be considered in evidence at all.

Again, some of the statements were actually recorded by an Assistant Sub-Inspector and the rest by a Sub-Inspector, but neither of the two was examined in court to prove the statement formally. They were of course initiated by the D.S.P. This is another ground to throw out the aforesaid statements. They are similarly recorded *verbatim*, and it is impossible to believe that the voters had used the same language and narrated facts in the same sequence in their deposition.

What is legally proved from the statement of the D.S.P. is that he saw some voters get down from the aforesaid truck and secured a copy of the electoral roll from one of the passengers. The copy bears no indication on the face of it to show that it belonged to the respondent or to any of his workers. Further on opening the ballot box we found that these voters had cast their votes in favour of the respondent. This all that can be said in favour of the petitioner so far as this instance is concerned.

There is, however, nothing on the record to connect the above vehicle with the respondent. I have already referred to the grave discrepancies in the evidence of Hem Singh and Bhagwan Singh P.Ws., the owners of the vehicle. Further it is possible that the driver, who was anxious to make some money for the owner, brought these voters and charged them fare. This possibility cannot be ruled out of consideration in the circumstances of the case, more especially when he had Rs. 1/9/- then with him. On this evidence it will be impossible to convict the respondent in a criminal court and the same standard or something approaching it has to be applied to such cases by the Election Tribunals.

After carefully considering the aforesaid evidence and the weighty arguments advanced at the bar my learned colleagues and I are unanimously of the opinion that the evidence is not sufficient to sustain the charge of mal-practice against the respondent. Doubtless there are suspicions against the respondent but suspicions, however strong, cannot take the place of proof. I must, therefore, hold that this instance also stands non-prove.

No. 11.—Barkat Ram of village Anwal is alleged to have brought certain voters in PNR 458 from Patwapur to Anwal, 2½ miles off, on 3rd January 1952 with the connivance of Randhir Singh agent of Ch. Badlu Rani. Berkot Ram, oddly enough, was not produced before us by the petitioner but we have seen the ballot box and found that he had voted for the petitioner. It is hard to believe that a voter or sympathiser of the petitioner would collect voters of the opposite party.

Again, none of the voters, said to have been brought by Barkat Ram, was examined in court. Reliance was, however, placed on the testimony of Ch. Ram Bhaj, P.W. 7, and Malik Sant Lal, P.W. 15, Ch. Ram Bhaj is the nephew of the petitioner and has been siding with him throughout and appearing before us almost on every hearing. He is, so to say, the petitioner himself. Malik Sant Lal's statement does not help the petitioner at all, for he says that on the day when polling took place at Anwal he left his village Patwapur at about 8-30 A.M. alongwith his voters on foot and at some distance he came across a station wagon of military type in which there was no passenger at that time. On reaching Anwal he saw at about 9-10 A.M. that the station wagon on the road had stopped and some 15 or 16 persons had got down from it. They did not come to his camp or to his side but went to the other side where camps were set up, and the witness could not say whether they were voters or workers because they had

not come to his side at all. The witness, be it noted, was supporting the petitioner on that day. His statement does not show that the aforesaid wagon belonged to the respondent or it had brought the respondent's voters. Workers could come by the car but not the voters. This evidence does not help the petitioner.

Sat Ram D.W. 40 and Sh. Nagpal Presiding Officer D.W. 54 were examined in defence and their version is that no voter had been brought in any motor vehicle to the polling station within their knowledge. Sat Ram is definite that the voters of Patwapur had come on foot to cast their votes. There is thus no evidence to prove this instance. This list also fails.

#### LIST No. 5(A)

In the return of his election expenses the respondent showed to have spent Rs. 2793/15/-, but in this list the petitioner has alleged the incurring of illegal expenditure by the respondent to the tune of Rs. 8,500.

The first allegation is that the respondent had employed two trucks, two station wagons and one lorry besides his own station wagon for his election propaganda and it is contended that he must have spent Rs. 4,000 at least on them. No particulars of this expenditure are disclosed either in this list or in any other document filed by or on behalf of the petitioner. It has already been shown that no motor vehicle is proved to have been used by the respondent or his agents for the conveyance of his electors, but the contention now is that the aforesaid vehicles were used by him and his workers during his election campaign. Several persons have been examined by the parties in support of their respective contentions, by the petitioner to show that the respondent's workers and agents had been touring the villages in those vehicles, and by the respondent that his workers and agents had been going about on foot or on cycles and at any rate he had not spent anything on their behalf.

The petitioner relies on the testimony of S.I. Chanchal Singh P.W. 3, A.D.I. Mahinder Singh, P.W. 4, Sh. Ram Bhaj Advocate, P.W. 7, A.S.I. Gurnam Singh, P.W. 9, Ch. Abhe Ram Advocate, P.W. 11, Ch. Sri Chand P.W. 12, Amrit P.W. 13, Malik Sant Lal Advocate, P.W. 15, Sh. Surat Singh, P.W. 17, Th. Nasib Singh P.W. 18, Sh. Maya Ram P.W. 26, Sh. Hathi Singh, P.W. 30, Sh. Hira Singh, P.W. 35, Sh. Deryao Singh, P.W. 44, Subedar Nand Ram, P.W. 46, Ch. Akhe Ram, P.W. 64, Kahnya Lamberdar, P.W. 70 and the petitioner P.W. 83. Some of these witnesses have already been examined under the previous issues and their testimony disbelieved. They and the other witnesses depose that they had been seeing the workers and agents of the respondent moving about in villages for his election propaganda in motor vehicles but they did not give out the names of those workers and agents on the other hand, the respondent examined his workers and agents and other notables to show that they had been touring about on foot or on cycles, see in this connection the evidence of Sh. Lal Chand, D.W. 2, Sh. Vidya Dhar, D.W. 5, Sh. Jawala Singh, D.W. 16, Sh. Hari Singh, D.W. 17, Capt. Jai Singh, D.W. 18, Banwari, D.W. 23, Sh. Thela Ram, D.W. 25, Sh. Bhagwan Singh, D.W. 26, Sh. Des Raj, D.S. 27, Sh. Dharam Singh, D.W. 45 and the respondent and his brother

It has to be remembered in this connection that the Parliamentary seat was also fought amongst several candidates along with the seat in dispute and the various candidates and their workers and agents were freely moving about in the villages in support of their respective candidates. Unless the witnesses are able to locate the persons travelling in a particular vehicle, it is, I believe, difficult to say that they were the workers of any particular candidate.

S.I. Chanchal Singh's evidence has already been referred to and discussed. A.D.I. Mahinder Singh merely says that he used to see the respondent's workers moving about on a car, a station wagon and a lorry, but he does not mention the number of the motor vehicles or the names and particulars of the workers. The same objection prevails against the evidence of A.S.I. Gurnam Singh who deposes that he used to see 4 motor vehicles i.e. two station wagons, one truck, and one car being used by the respondent and his workers. This evidence is much too vague to be believed. I have carefully gone through the above evidence but have not been impressed by it and I hold that his charge is not proved against the respondent.

The second item in this list is the sum of Rs. 1,000 alleged to have been spent by the respondent on the employment of a *Bhajan* party of one Johri Singh (consisting of 5 persons) for two months i.e. from 1st November 1951 to 31st December 1951. The allegation is that the respondent employed this singing party for two

months for his propaganda and agreed to pay them Rs. 500 p.m. and thereby he incurred an expense of Rs. 1,000 which he did not show in his Return of Expenses. The respondent of course denied to have employed any such singing party at all. Here again the parties examined a large number of persons in support of their respective allegations. The petitioner's witnesses state that they saw the aforesaid party preaching for the respondent's candidature. They are Ch. Ram Bhaj, P.W. 7, A.S.I. Gurnam Singh, P.W. 9, Sh. Sri Chand, P.W. 12, Amrit, P.W. 13, Sh. Surat Singh, P.W. 17, Th. Nasib Singh, P.W. 18, Sh. Jagdev Singh, P.W. 65 and Sh. Bakhtawar Jat, P.W. 67. On the other hand Sh. Vidya Dhar, D.W. 5, Molar, D.W. 16, Jawala Singh, D.W. 16, Hari Singh, D.W. 17, Jai Singh, D.W. 18, Tehla Ram, D.W. 25, Bhagwan Singh, D.W. 26, Mange Ram, D.W. 29, Sheo Ram, D.W. 30, Devi Singh, D.W. 31, Ganeshi, D.W. 33, Mam Chand, D.W. 34 Ram Sarup, D.W. 35, Bhagwan Singh, D.W. 36, and Bhagat Singh, D.W. 45 depose that they never heard Johri Singh's party doing any propaganda for the respondent.

Johri Singh (D.W. 43) is a preacher or *Updeshak* of Arya Samaj and has got a Bhajan party to preach for Arya Samaj though he is not its paid worker. He resides in village Jussana Furmana. He says that he goes out whenever he is engaged by any party but he was never employed by Ch. Badlu Ram or by any other candidate for propaganda during the election days and did not preach for any party. In fact, as he says, he is against preaching for any political party. The average income of his party is Rs. 50 p.m.

As contended by the respondent's learned counsel, the preaching by a singing party for any candidate is not forbidden, but what is forbidden or what is illegal is the employment of such a party on payment. He concedes for the sake of arguments that the singing party might have preached for the respondent's candidature as the respondent had been the President of the Arya Samaj of his village and the preacher is also an Arya Samajist, but what he contests is the employment of this singing party and the payment of any amount to them. The crucial point thus is whether the respondent paid any money to Johri Singh or his party for his propaganda. On this point the petitioner has examined Birkha Jat P.W. 57 and Kahnya P.W. 76 and the whole case hangs upon their evidence.

Birkha Ram is the Lamberdar of Sangi and states that two or three days before the polling started Johri Singh demanded Rs. 1,000 from Ch. Badlu Ram on the ground that he and his party had worked for him for about two months, and thereupon Ch. Badlu Ram paid him Rs. 1,000 in the thresh-hold of his own house. The witness lives just opposite and says that he was then smoking outside his house in the lane with Kahnya and saw the money pass hands from there. The petitioner's counsel conceded before us that this witness had voted for the petitioner in the last election. Again, the witness was prosecuted in an Excise case about 4 or 5 years ago but was acquitted. He says that he does not remember whether Ch. Badlu Ram appeared as a witness against him in that case, but the respondent has produced a certified copy of his deposition in that case, marked Ex. R.X. to belie the witness.

Kahnya Jat also of Sangi, gives quite a different version. He says that he and Birkha were smoking *Huqa* in front of Birkha's house and therefrom they both saw Johri Singh demanding Rs. 1,000 from the respondent and his brother Ch. Piyare Lal for having worked for them for two months, and they actually paid the amount to him. This witness introduces Ch. Piyare Lal also whereas the previous witness was absolutely silent about him. Further, according to this witness, the aforesaid payment was made at the house of Ch. Piyare Lal which is quite distinct and separate from the house of Ch. Badlu Ram, they being opposite to each other. When pressed further on this point, the witness admitted that both the brothers were sitting and he could not say who actually had passed the money to Johri Singh because a *Gali* (lanc) intervened. The witness also admitted that on the death of his uncle Nannand, he applied for Lamberdari in place of his uncle but instead the respondent's father was appointed as Lamberdar. This shows that his relations with the respondent are anything but cordial. It was further admitted before us that the witness had voted for the petitioner in the last election.

The evidence of the above two witnesses on the vital point of payment is hopelessly conflicting and discrepant and it is impossible to hold on this evidence that a sum of Rs. 1,000 was paid to the preacher by the respondent. It is also improbable that a singing party, whose monthly earning was not more than Rs. 50, would be paid Rs. 500 p.m. I have, therefore, no hesitation in holding that the respondent is not proved to have employed the above singing party for his propaganda or paid them any amount therefor.

The third item is also of Rs. 1,000 said to have been paid by the respondent to his workers, but no evidence was led on this item and the petitioner's counsel did not press it before us. Likewise the 4th item of Rs. 500 said to have been spent on food and refreshment of 50 workers and 7 agents of the respondent was not pressed as there was no evidence to support it.

The 5th and the last item is a sum of Rs. 2,000 which the respondent had spent on the purchase of his car admittedly used in the election days. This item will be discussed in list No. 7. Thus none of the items of this list, as discussed above, is proved.

#### LIST No. 5(B)

This list comprises 5 items wherein the respondent is said to have employed persons for his propaganda. The first item relates to Johri Singh's Bhajan party which has already been discussed. As regards the remaining 4 items, there is no evidence on the record and none of these was pressed by the petitioner's counsel during his argument. This list thus stands unproved.

#### LIST No. 6

This list mentions 12 cases in which the respondent is alleged to have obtained the assistance of Government servants for his propaganda and I propose to discuss them briefly—

(1) Resala Chaukidar of V. Khadwari is said to have been canvassing for the respondent during his election campaign. This Chaukidar was examined as P.W. 68 but his evidence is not reliable and the petitioner's counsel did not press this instance in his argument.

(2) Mei Dhan P.W. 68 is the Jamadar Chaukidar of V. Khadwari and he says that he was pressed by the respondent to work and canvass for the respondent otherwise he would be removed from the Jamadari. His is the solitary statement and this has already been disbelieved. There is no further evidence to support it. This instance is also not proved.

(3) Deep Chand Chaukidar of Chamari, P.W. 47, merely states that he was deputed by the respondent to bring his voters to the polling station and he did accordingly. I fail to see how he could be said to have assisted the respondent in his canvassing. Being a village official, it was his duty to lead the voters to the polling station and he does not say that he did anything else and at the bidding of the respondent. There is, therefore, no force in this instance, either.

(4-5) Hetwa Chaukidar of village Kalinga, Zail Kalanour, is alleged to have canvassed for the respondent but he was not produced before us. Th. Nasib Singh P.W. 18 is the only person to state that Hetwa was working for the congress candidate but he did not disclose how he was working or what work he was doing for the candidate. The witness does not state that he saw Hetwa canvassing for the respondent. There is no evidence on this point. The instance thus goes off for want of proof.

(6) No evidence.

(7) Lehri Chaukidar of village Garnauthi is said to have canvassed for the respondent but he too was not examined to support this allegation. Molar P.W. 32, Hari Singh, P.W. 35 and Herdwarl Jat, P.W. 37 were examined on this point but their evidence has already been discussed and disbelieved. This instance thus stands non-proved.

(8) Likewise Prithi Chaukidar of V. Maradhi, said to have canvassed for the respondent, was not produced in court, but the respondent's counsel conceded before us that he was a respondent's voter. Deryao Singh, P.W. 44, Phula, P.W. 45, Nand Ram, P.W. 46 merely depose that they saw the Chaukidar collect voters and lead them to the

polling booth. This was no assistance to the respondent even though some of those persons might be his voters

(9) No evidence.

(10) Maya Ram Lamberdar of village Ballab P.W. 26, claims to have supported the respondent and canvassed for him at his instance, but it is significant to observe that he had actually voted for the petitioner in the election. He was a supporter of the petitioner and it is impossible to believe that he had worked or canvassed for the respondent.

(11) Mai Chand Chhukidar of V. Guddi-kheri, said to have helped the respondent, was not examined though it is admitted that he had voted for the respondent. The mere fact that he was respondent's voter is no ground to believe that he must have worked or canvassed for him. Hira Singh P.W. 52 and Pertap Singh P.W. 75, examined on the point cannot be believed. Hira Singh is a Lamberdar and voted for the petitioner. Pertap Singh did not make a straight statement in the court. Both of them have already been disbelieved under a previous issue. Thus this instance is also not proved.

(12) Hira Singh Lamberdar P.W. 52 claims to have collected voters for the respondent and sent them to the polling station in his transport. Being a petitioner's voter, he is out to help him and his testimony has already been disbelieved.

Thus none of the instances cited in this list is proved.

#### LIST No. 7

This list deals with the petitioner's objection to the return of election expenses filed by the respondent. On the receipt side it is contended that the respondent did not show a sum of Rs. 4,000 said to have been received from the Congress party for his election propaganda but there is no evidence at all to support this allegation. There is thus nothing wrong on the receipt side.

As regards the expense side, a few objections have been taken and these may be discussed briefly—

(i) It is contended that during the election campaign the respondent had his office and headquarters at Rohtak and incurred a good deal of expenditure in connection therewith but he did not show it in his return. In particular, it is argued, he should have apportioned the house or office rent and shown it in the return. The fact is that Ch. Badlu Ram's family resides in village Sanji but he has an evacuee house allotted to him in the city of Rohtak where he resides alone. This house consists of one room only besides a store-room, a kitchen and a bath. It is in evidence that during the election days his workers and agents used to meet him and get instructions from him at this house, but it cannot be inferred from it that he was using this room or house as his election office. It is, in my opinion, idle to argue that he should have shown a portion of the rent of this house as his office expense in the election return. I over-rule this objection.

(ii) The objection is that the respondent purchased a car No. DLH 8907 for his election purposes for Rs. 2,500 but he did not show this amount in his returns. He admits to have purchased this car second hand from a company of Delhi for Rs. 2,000 odd and brought it to Rohtak on 7th November 1951. He had paid Rs. 200 as earnest money in October, 1951 and after making final payment on 7th November he brought it in his use. He admits that he used this car during the election campaign and has it even now and he brought it for our inspection during the arguments. His version is that he has always been keeping a car and changing the old one, and he had purchased this car in the usual course. Before this car he had Chevrolet taxi No. 479 which he had sold in the end of 1949 or the beginning of 1950 and thereafter he purchased the car in dispute. He claims to have been keeping a car since 1934.

His election returns show a receipt of Rs. 200 on 5th September and Rs. 2,800 on 3rd November 1951 from self. It is contended that the sum of Rs. 200 represented the earnest money paid by him for the disputed car, thus showing that he had bought it for his election propaganda. There is no evidence on this point save that of the respondent and there is no cogent reason to disbelieve it. There is no doubt that he has been keeping a car since a long time and it is probable that the coming election impelled him to go in for a car at once, but it is not improbable that he intended to keep it for his own use thereafter. After all, he was a member of the Provincial Legislature previously and he succeeded in the present election also and, therefore, he thought it in keeping with his dignity to maintain a car for his use. He does not know driving and is not keeping a driver and says that he utilises the services of his nephew whenever required.

Even assuming that he had purchased the car primarily for his election purposes the omission to mention it or show its depreciation in his return of expense cannot imply malafides. In order to succeed the petitioner must show that the return is false in material particulars. The word "false" indicates that the return of election expenses must be proved to be deliberately incorrect. In other words a corrupt motive must be shown. The motive may be to omit legitimate expenses from the return where a maximum scale has been fixed, or the intention may be to conceal expenditure which would go to prove some other corrupt practices. Neither of these two contingences applied to the present case. The maximum limit of expenditure was Rs. 7,000 and the respondent had shown a total expenditure of Rs. 2793/15/-. The addition of Rs. 2,000 or even Rs. 2,500 would not have mattered much and would have still kept the expenditure much below the prescribed scale. Thus, this cannot have been the motive for the respondent to conceal this item in his election returns. Nor is there any allegation, much less proof, that the omission was meant to conceal some corrupt practice.

It is thus evident that the omission above-mentioned was bonafide and the return cannot be said to be false in this behalf.

(iii) This item relates to the salaries and remuneration of the workers and agents of the respondent said to have been employed by him for his election, but no expense is shown to have been incurred by him on them.

(iv) The petitioner complains that the respondent has shown no expense incurred on the travelling and food expenses of his agents, messengers and clerks but no such expense has been proved on the record.

(v) The last contention is that the respondent had employed two trucks, two station wagons and one lorry for the use of his workers and agents but he did not show the petrol and mobil oil consumed on them. As already observed, it is not shown that the respondent or his workers used any motor vehicle except his own and in respect of this car he has shown the expense incurred by him on the purchase of two tyres, petrol, mobil oil and grease. For instance he spent—

(a) Rs. 289/11/- on two tyres

(b) Rs. 253/11/- on petrol and mobil oil from 8th November 1951 to 30th November 1951.

(c) Rs. 487 on petrol etc. from 1st December 1951 to 31st December 1951.

(d) Rs. 651 on petrol etc. from 1st January 1952 to 19th January 1952.

Roughly speaking, with this petrol and mobil oil his car must have done about 5,000 miles during the election campaign. Besides he has shown Rs. 240 as the salary of his driver Suraj Bhan from 7th November 1951 to 18th January 1952 at the rate of Rs. 100 p.m.

One of the items on the expense side is the sum of Rs. 70 paid by the respondent for the use of a loudspeaker at the rate of Rs. 10 p.m. In his statement in court the respondent stated that he had paid Rs. 10 for the loudspeaker and the petitioner's counsel now contends that the return is thus false. No objection about this item was taken in the pleadings or in the lists at all. What the respondent meant was that he had paid Rs. 10 per day for the loudspeaker but the word "per day" was omitted by him inadvertently. He had no motive to conceal

this item or to show Rs. 60 more than what he had actually spent if the petitioner's argument be presumed correct for a moment. It is thus clear that the Election Returns, filed by the respondent, are not proved to be false in any material particulars, and this objection of the petitioner does not, therefore, prevail.

The result is that none of the corrupt practices attributed to the respondent stands proved on the record and there is, therefore, no cogent ground to set aside his election or declare it void. The petition is, therefore, to be dismissed.

Accordingly I would dismiss the petition but in the peculiar circumstances and facts of this case, I would leave the parties to bear their own costs. Pleader's fee Rs 500.

Announced.

HISSAR,  
The 6th July, 1953.

I agree. (Sd.) TEK CHAND SETHI, *Member*.  
I agree. (Sd.) MAHARAJ KISHORE, *Chairman*.  
I agree. (Sd.) GURBAKSH SINGH GYANI, *Member*.

[No. 19/139/52-Elec.III/12597.]

By order,  
P. R. KRISHNAMURTHY, Asstt. Secy.